

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

IN RE:

KENNETH R. WATERMAN

) CHAPTER 7
) CASE NO. 09-17756-fkb

**OPPOSITION OF MERRIMACK VALLEY FEDERAL CREDIT UNION TO
DEBTOR'S MOTION TO REOPEN CASE FOR PURPOSE OF REDEMPTION**

Now comes, Merrimack Valley Federal Credit Union ("MVFCU"), and submits the following opposition to Debtor's Motion to Reopen Case for Purpose of Redemption:

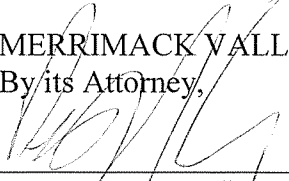
1. On August 14, 2009, the Debtor filed this petition under Chapter 7 of the United States Bankruptcy Code.
2. At the time the Petition was filed, the Debtor was in default of a Promissory Note given to MVFCU in the original principal amount of \$20,046.00. In order to secure the obligations under the Note, MVFCU was given a first lienholder interest on a 2001 BMW 330I Sedan (the "BMW").
3. At the time the Petition was filed, the payoff balance was \$9,824.36, and the Debtor had failed to make any payments to MVFCU since July of 2008.
4. At the time the Petition was filed, the Debtor's Schedule D valued the BMW at \$6,715.00. Pursuant to the Debtor's Statement of Intention, the Debtor intended to Reaffirm the debt and based his valuation on the "private party book value"
5. On September 30, 2009, the Debtor offered only \$4,000 to redeem the Vehicle, payable through installments. The Bank refused as that figure was below the value the Debtor and MVFCU had placed on the BMW and the Debtor's offer was not a one time lump sum payment. A copy of the Debtor's correspondence is attached as Exhibit "1".
6. On November 17, 2009, the Debtor was discharged. On November 20, 2009, the Bankruptcy case was closed.
7. Although the debt was discharged and the case closed, the Debtor continued to use the BMW without making any payments thereon, concealing same from MVFCU and its repossession agents.

8. As a result of the Debtor's conduct and refusal to surrender the BMW, MVFCU was forced to obtain a Lawrence District Court Order compelling return of the BMW. A copy of the Order is attached hereto as Exhibit 2".
9. Even if the case is reopened, the Debtor has used and diminished the value of the BMW for six (6) months after the case was closed, thereby seriously eroding any equity in the BMW. Moreover, the Debtor's actions have caused MVFCU to incur fees and costs of about \$1,138.20 (District Court Replevin action). The Debtor should not unfairly benefit from the intentional and deliberate depreciation of the BMW post Bankruptcy and must reimburse MVFCU for costs incurred.
10. Even if the case is reopened, the Debtor has no ability to make a lump sum redemption payment in accord with 11 USC 722, and therefore, this matter is futile and simply brought forward as another attempt to delay and hinder MVFCU from taking possession of the BMW.
11. The Debtor has deliberately used and depreciated the BMW without any payments for a period of (2) years. As a result, any redemption value must be set as of the date of the Petition and not based on the BMW's current value.

WHEREFORE, Merrimack Valley Federal Credit Union requests this Court Order:

1. The Debtor's Motion to Re-open for sole purpose of Redemption be denied;
2. That, if the Case is reopened, the Redemption value be determined as of the Petition filing date, and that the Debtor be required to make one lump sum redemption payment of \$6,715.00;
3. That any Redemption includes legal fees and costs resulting after the Bankruptcy case was closed;
4. That this Court Order the Debtor to surrender the BMW in the event he cannot comply with the redemption amount.
5. Such other and further relief as this Court may determine.

MERRIMACK VALLEY FEDERAL CREDIT UNION
By its Attorney,



Peter Kline BBO#559017
Kline & Sanders LLP
313 Washington Street, Suite 221
Newton, MA 02458
617-964-2200
Pkline@Klinesanders.com



PARKER LAW OFFICES
COUNSELLORS AT LAW

185 ALEWIFE BROOK PARKWAY, SUITE 404
CAMBRIDGE, MASSACHUSETTS 02138
TEL. 617-491-2265 • FAX. 617-491-7800

September 30, 2009

Merrimack Valley Fed Credit Union
P.O. Box 909
North Andover, MA 01845-0909


RE: Kenneth Roy Waterman, Loan Number 0000088205-01

Dear Ms. Martinoli:

Thank you for your recent letter. This notice is to let you know that my client, Kenneth Roy Waterman, hereby requests that he be allowed to redeem his BMW.

Mr. Waterman hereby offers \$4,000.00 to obtain clean title to the vehicle. He believes he can immediately access savings representing 50% of this amount. He further believes he can borrow the balance within short order. This offer reflects the current market value of the car as stated by Kelly's Blue Book, minus Mr. Waterman's estimate of needed repairs.

If this offer is not accepted on or before October 7, 2009, Mr. Waterman will assume that the credit union does not wish to accept this offer.

Sincerely,

Terrence L. Parker, Esq.

Cc: Kenneth Waterman

enclosures

COMMONWEALTH OF MASSACHUSETTS
ESSEX, SS. LAWRENCE DISTRICT COURT
CIVIL ACTION NO. 1018CV0869

MERRIMACK VALLEY FEDERAL)
CREDIT UNION)
)
Plaintiff)
)
vs.)
)
KENNETH R. WATERMAN)
)
Defendant)

ORDER COMPELLING DELIVERY OF VEHICLE

This action came to be heard upon the motion for Order to Compel delivery of a vehicle and was argued by counsel; and upon consideration thereof, it is **ORDERED AND ADJUDGED** that MERRIMACK VALLEY FEDERAL CREDIT UNION'S request for Order be granted, and the **DEFENDANT, KENNETH R. WATERMAN, AND HIS AGENTS, SERVANTS, ATTORNEYS, AND ASSIGNEES, BE ORDERED:**

1. That Defendant and his agents, servants, attorneys, nominees and assignees, be enjoined from causing or permitting the stripping, impairment, sale, transfer, assignment, encumbering, removal, concealment or any other disposition of the 2001 BMW 3 Series Sedan 330I, also identified by Vehicle Identification Number WBAAV534X1FJ70220, pending further order of this Court.
2. The Defendant be ordered: (a) to identify the location of each of the Vehicles; (b) to deliver said Vehicles and accessories forthwith to the Plaintiff; (c) to refrain from interfering in any way with Plaintiff's repossession of the Vehicles and (d) the Plaintiff is hereby permitted entry upon property owned or leased by the Defendant for the purpose of obtaining and securing possession of said Vehicles and accessories and removing same from said property.

JUSTICE of the Lawrence District Court, this 21st day of May, in the year of our Lord Two Thousand Ten.


Lawrence District Court Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

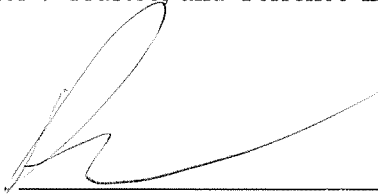
IN RE:

KENNETH R. WATERMAN

) CHAPTER 7
) CASE NO. 09-17756-fkb

CERTIFICATE OF SERVICE

I, Peter T. Kline, Attorney for Merrimack Valley Federal Credit Union, certify that I have served a copy of its Objection to Debtor's Motion to Reopen by mailing a copy of same, First Class Mail, postage prepaid, to the Debtor at 200 Vantage Terrace, Swampscott, MA 01907, and by using the CM/ECF system to serve John Fitzgerald, Office of the US Trustee, Joseph Butler as the Chapter 7 Trustee, and Terrence L. Parker as the Debtor's attorney.



Peter T. Kline

Dated: 5/27/10